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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM—1960

No. 294

LOUISIANA, EX REL. JACK P. F. GREMILLION, ATTORNEY GENERAL,
Plaintiff-Appellant,

versus

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,
Defendants-Appellees;

NEW ORLEANS BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,
Plaintiffs-Appellees,

versus

WADE O. MARTIN, SECRETARY OF STATE, STATE OF LOUISIANA, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of Louisiana.

BRIEF FOR THE APPELLANTS.

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OPINION BELOW.

The opinion of the three-judge District Court (R. pp. 176-179) is reported at 181 Fed. Supp. 37.

JURISDICTION.

The judgment of the three-judge District Court was entered on February 29, 1960 (R. pp. 180-182). Appellants filed a motion for a new trial on March 7, 1960 (R. pp. 182-186) and the said motion for new trial was denied on March 31, 1960 (R. pp. 189-190). On April 25, 1960, the appellants filed a notice of appeal to the United States Supreme Court (R. pp. 190-193), and on June 2, 1960, an extension of time was requested (R. pp. 193-194) and the said appellants were granted an extension of 45 days within which to file the jurisdictional statement (R. p. 195). The jurisdictional statement was subsequently timely filed and this Court noted probable jurisdiction on October 24, 1960 (R. p. 201). The jurisdiction of this Court rests on 28 U. S. C. 1253.

QUESTIONS PRESENTED.

1. May the state in the exercise of its police power require that organizations doing business in that state file a list of the members of that particular organization?

2. May the state in the exercise of its police power require organizations or their affiliates operating in the state to file with the state a list of officers of the parent organization, or its affiliate branches located in the state?

3. May the state in a valid exercise of its police power determine whether organizations within the state are dominated by Communist or subversive leadership?

STATUTES INVOLVED.

The following statutes of Louisiana were held to be invalid: (Louisiana Revised Statutes 12:401-409) Act 2 of 1924 and (Louisiana Revised Statutes 14:385-389) Act 260 of 1958. Said statutes are to be found in Appendix A of this brief.

STATEMENT.

The State of Louisiana through its Attorney General on March 1, 1956, filed in the 19th Judicial District Court for the Parish of East Baton Rouge a suit seeking to enjoin the National Association for the Advancement of Colored People for doing business in the state because of its failure and refusal to comply with the provisions of Louisiana Revised Statutes 12:401-409 which required that certain corporations or organizations file a list of their members and officers with the Secretary of State each year (R. pp. 1-8). A petition for removal (Civil Action No. 1678, *State of Louisiana Attorney General Jack P. F. Gremillion v. National Association for the Advancement of Colored People, et al.*) was filed in the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, on March 28, 1956, seeking to remove the suit instituted in the state Court pursuant to provisions of 28 U. S. C. 1243, *et seq.* (R. pp. 10-13).

Despite the purported petition for removal, the state District Court issued an injunction restraining the National Association for the Advancement of Colored People, its affiliates and members from functioning in the state until the membership and officers list filing requirement had been complied with. On November 26, 1956,

Louisiana Court of Appeal, First Circuit, held that since a purported removal petition had been filed in a federal court the state court could not decide the validity of the purported removal proceedings and that the state court had lost jurisdiction until such time as the federal court decided whether or not it had jurisdiction to hear the case on removal (90 So. (2d) 884).

No further action was taken on this case until such time as a subsequent case (*Orleans, Branch of the NAACP, et al., v. Wade O. Martin, et al.*, Civil Action No. 8554) was instituted in the Federal District Court alleging that L. R. S. 14:385-389, as well as L. R. S. 12:401-409, were unconstitutional in that they violated the due process and equal protection clauses of the Fourteenth Amendment, Article 3, of the Federal Constitution and Amendment 1 to the United States Constitution (R. pp. 15-24).

Both of these cases were consolidated for trial and a three-judge court was ordered to hear them (R. pp. 56-59). All of the evidence in this case as per instructions of the Court was introduced in the form of documents, affidavits or depositions (R. pp. 59-175).

On February 29, 1960, the three-judge court rendered judgment declaring that said statutes were unconstitutional and enjoining enforcement by any state official of the provisions against the National Association for the Advancement of Colored People, its affiliates or members, etc. (R. pp. 180-182).

SUMMARY OF ARGUMENT.

A state in the exercise of its police power has the authority to control and regulate the operation of corporations or organizations within its boundaries. Pursuant to this power, the State of Louisiana enacted a statute requiring certain classifications of organizations and corporations to file, as a prerequisite to operation in the state, a list of its members and officers. This statute was enacted solely for the purpose of correcting and preventing in the future the evils which the Legislature of the state believed stemmed from, and were fostered by, secret membership organizations. This statute is nothing but a legislative method of controlling an existing and contemplated evil threatening the welfare of the citizens of the state and as such is outside the purview of the "Freedom of Association" as it has been interpreted by this Court.

The District Court in striking down the statutory provision of Louisiana law which required the NAACP to file a list of its officers went far beyond, and even in direct conflict with, decisions of this Court. Time and again this Court has held that such information is not privileged and does not come under the protection of Freedom of Association doctrine.

The state in the exercise of its police power may protect itself and its individual citizens from organizations dominated and or controlled by Communist and or subversive leadership. The state in order to fulfill its obligations toward its citizens has the right to require the filing of such information as will legitimately be helpful in determining whether or not an organization seeking to do business in the state is Communist dominated.

ARGUMENT.

I.

THE STATE OF LOUISIANA MAY ENACT A MEMBERSHIP REGISTRATION STATUTE, IF THE PRODUCTION OF SAID MEMBERS' NAMES IS REASONABLY NECESSARY TO ACCOMPLISH THE STATE'S OBLIGATION TO PROTECT ITS CITIZENS.

It is axiomatic in the law that the state has the power and duty to exercise its police power to protect its citizens.

> "The police power is as old as civilized governments which exercise it. The states existed before the Constitution of the United States, and they possessed the police power before the adoption of that organic document. Moreover, its has been held many times that the Constitution supposes the preexistence of the police power, and must be construed with reference to that fact.
>
> "The breadth and extent of the police power, covering the exigencies confronting the community, its adaptability, inalienability, and the number of public purposes included in its scope make it a principal pillar of government. It has been stated that the police power in effect sums up the whole power of government, and that all other powers are only incidental and ancillary to the execution of the police power; it is that full final power involved in the administration of law as the means to the attainment of practical justice. Moreover, it has been said that the very existence of government depends on it, as well as the security of the social

order, the life and health of the citizens, the enjoyment of private and social life, and the beneficial use of property." 11 *Am. Jur.* 969.

While it is admitted that a state may not under the guise of police power, unnecessarily and unreasonably deprive any person or persons of protected rights under Federal Constitution, the Court should always remember that each and every act of a state or sovereignty enacted for the general good and order will to some extent infringe upon someone's right.

> "We must be cautious about pressing the broad words of the Fourteenth Amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guaranties of the Bill of Rights. They more or less limit the liberty of the individual, or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it is often difficult to make the line where what is called the police power of the states is limited by the Constitution of the United States, judges should be slow to read into the latter a nolumus mutare as against the lawmaking power." *Noble State Bank v. Haskle*, 219 U. S. 104, 116.

This Court has, time and again, when confronted with a situation where there is a possible conflict between the provisions of the First Amendment and the police power of the state or federal government, held that stat-

utes enacted in a valid exercise of police power are enforceable, even though they might infringe upon freedoms guaranteed by the First Amendment.

Waugh v. Board of Trustees, 237 U. S. 589, 35 S. Ct. 720 (1914):

> "It is said that the fraternity to which plaintiff belongs is a moral and, of itself, a disciplinary force. **But whether such membership makes against discipline was for the State of Mississippi to determine.** . . . The enactment of the statute may have been induced by the opinion that membership in the prohibited societies divided the attention of the students, and distracted from that singleness of purpose which the state desired to exist in its public educational institutions. **It is not for us to entertain conjectures in opposition to the views of the state and annul its regulations upon disputable considerations of their wisdom or necessity.** . . . It is very trite to say that **the right to pursue happiness and exercise rights and liberty** are subject, in some degree, to the limitations of the law, and the condition upon which the state of Mississippi offers the complainant free instruction in its University, that while a student there, he renounce affiliation with a society which the state considers inimical to discipline, finds no prohibition in the 14th Amendment." At 596 (Emphasis supplied.)

Cox v. New Hampshire, 312 U. S. 569, 61 S. Ct. 762 (1941):

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society main-

taining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend." At 574.

American Communications Association v. Douds, 339 U. S. 382, 70 S. Ct. 674 (1950):

"Although the First Amendment provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of constitutional government to survive. If it is to survive it must have power to protect itself against unlawful conduct and, under some circumstances, against incitements to commit unlawful acts.

"* * * the right of the public to be protected from evils of conduct, even though First Amendment rights of persons or groups are thereby in some manner infringed, has received frequent and consistent recognition by this Court. We have noted that the blaring sound truck invades the privacy of the home and may drown out others who wish to be heard. Kovacs v. Cooper, 1949, 336 U. S. 77, 69 S. Ct. 448. The unauthorized parade through city streets by a religious or political group disrupts traffic and may prevent the discharge of the

most essential obligations of local government. Cox v. New Hampshire, 1941, 312 U. S. 569, 574, 61 S. Ct. 762, 765, 85 L. Ed. 1049, 133 A. L. R. 1396. The exercise of particular First Amendment rights may fly in the face of the public interest in the health of children, Prince v. Massachusetts, 1944, 321 U. S. 158, 64 S. Ct. 438, 88 L. Ed. 645, or of the whole community, Jacobson v. Massachusetts, 1905, 197 U. S. 11, 25 S. Ct. 358, 49 L. Ed. 643, 3 Ann. Cas. 765, and it may be offensive to the moral standards of the community, Reynolds v. United States, 1878, 98 U. S. 145, 25 L. Ed. 244; Davis v. Beason, 1890, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637. And Government's obligation to provide an efficient public service, United Public Workers v. Mitchell, 1947, 330 U. S. 75, 67 S. Ct. 556, 91 L. Ed. 754, and its interest in the character of members of the bar, In re Summers, 325 U. S. 561, 65 S. Ct. 1307, 89 L. Ed. 1795 (1945), sometimes admit of limitations upon rights set out in the First Amendment. And see Giboney v. Empire Storage & Ice Co., 1949, 336 U. S. 490, 499-501, 69 S. Ct. 684, 689-690. We have never held that such freedoms are absolute. The reason is plain. As Chief Justice Hughes put it, 'Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.' Cox v. New Hampshire, supra, at 574." At 398.

Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718 (1950):

"The problems of government are practical ones and may justify, if they do not require, rough accommodations,—illogical, it may be, and unscientific." Metropolis Theatre Co. v. Chicago, 228 U. S. 61, 69-70, 33 S. Ct. 441, 443, 57 L. Ed. 730. A State may "direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed." At 468.

Poulous v. New Hampshire, 345 U. S. 395, 73 S. Ct. 760 (1953):

"The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or instruction. It is a nonsequitur to say that First Amendment rights may not be regulated because they hold a preferred position in the hierarchy of the constitutional guarantees of the incidents of freedom. This Court has never so held and indeed has definitely indicated the contrary." At 405.

"There is no basis for saying that freedom and order are not compatible. That would be a decision of desperation. Regulation and suppression are not the same, either in purpose or result, and courts of justice can tell the difference. We must and do assume that with the determination of the Supreme Court of New Hampshire that the present ordinance entitles Jehovah's Witnesses to hold religious services in Goodwin Park at rea-

sonable hours and times, the Portsmouth Council will promptly and fairly administer their responsibility in issuing permits on request." At 408.

Uphaus v. Wyman, 360 U. S. 72, 79 S. Ct. 1040 (1959):

"Registration statutes, quo warranto proceedings as to subversive corporations, the subversive instigation of riots, and a host of other subjects, directly affecting state security furnish grist for the state's legislative mill. Moreover, the right of the state to require the production of corporate papers of a state-chartered corporation in an inquiry to determine whether corporate activity is violative of state policy stands unimpaired." At 77.

Barenblatt v. United States, 360 U. S. 109, 79 S. Ct. 1081 (1959):

"The precise constitutional issue confronting us is whether the Subcommittee's inquiry into petitioner's past or present membership in the Communist Party[25] transgressed the provisions of the First Amendment,[26] which of course reach and limit congressional investigations. Watkins, supra, 354 U. S. at page 197, 77 S. Ct. at page 1184.

"The Court's past cases establish sure guides to decision. Undeniably, the First Amendment in some circumstances protects an individual from being compelled to disclose his associational relationships. However, the protection of the First Amendment, unlike a proper claim of the privilege against self-incrimination under the Fifth Amendment, do not afford a witness the right to resist

inquiry in all circumstances. Where First Amendment rights are asserted to bar governmental interrogation resolution of the issue always involves a balancing by the courts of the competing private and public interests at stake in the particular circumstances shown. These principles were recognized in the Watkins case, where, in speaking of the First Amendment in relation to congressional inquiries, we said (354 U. S. at page 198, 77 S. Ct. at page 1185): 'It is manifest that despite the adverse effects which follow upon compelled disclosure of private matters, not all such inquiries are barred. * * * The critical element is the existence of and the weight to be ascribed to, the interest of the Congress in demanding disclosures from an unwilling witness.' See also American Communications Ass'n, C. I. O. v. Douds, 339 U. S. 382, 399-400, 70 S. Ct. 674, 684-685, 94 L. Ed. 925; United States v. Rumely, supra, 345 U. S. at pages 43-44, 73 S. Ct. at pages 544-545. More recently in National Association for Advancement of Colored People v. State of Alabama, 357 U. S. 449, 463-466, 78 S. Ct. 1163, 1172-1174, 2 L. Ed. (2d) 1488, we applied the same principles in judging state action claimed to infringe rights of association assured by the Due Process Clause of the Fourteenth Amendment, and stated that the 'subordinating interest of the State must be compelling' in order to overcome the individual constitutional rights at stake." At 126.

"Nor can we accept the further contention that this investigation should not be deemed to have been in furtherance of a legislative purpose because the true objective of the Committee and of the Congress

was purely 'exposure.' So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power." At 132.

"We conclude that the balance between the individual and the governmental interests here at stake must be struck in favor of the latter, and that therefore the provisions of the First Amendment have not been offended." At 134.

Times Film Corp. v. Chicago, 81 S. Ct. 391, 364 U. S. (1961):

"First Amendment privilege might have to give way to the necessities of public welfare. It has never been held that liberty of speech is absolute. Nor, has it been suggested that all previous restraints on speech are invalid." At 393.

* * * * * * *

"It is not for the Court to limit the State in its selection of the remedy it deems most effective to cope with such a problem, absent, of course, a showing of unreasonable strictures on individual liberty resulting from its application in particular circumstances." At 395.

It has been contended by the appellees herein that Louisiana's membership list statute deprives them of the right of association which is part of the Freedom of Assembly, guaranteed by the First Amendment to the United States Constitution. It is and will be contended by the State of Louisiana that the Registration statute does not substantially interfere with the freedom of association

and furthermore that if it should interfere with that freedom it only does so incidental to a valid exercise of the state police power.

In order to determine the conditions prevailing at the time the statute was enacted and the purposes for which it was enacted, it is necessary to turn the clock back to the early 1920's in the State of Louisiana. For the edification of the members of the Court who might not be familiar with the events in Louisiana at that time, probably the best and most concise article on the subject is one by the Governor of the State of Louisiana, Honorable John M. Parker, found in 4 *Loyola Law Journal* 100, which is reproduced verbatim herein in Appendix B.

With these conditions prevailing, a new Governor was elected and took office in 1924 and when the Legislature met, one of the first bills considered was one requiring the filing of membership lists. There can be no doubt that while the Ku Klux Klan was the primary target of the bill, it was the intention of the Legislature not only to eliminate an evil which existed but further to introduce a bill which would protect the state and its citizens in the future from any organization operating in secrecy. It is clear beyond question that the state had two purposes in mind when adopting Act 2 of 1924.

1. The Legislature intended to curtail the activities of the Ku Klux Klan by submitting to public light a list of the members of said organization.
2. The Legislature intended that all organizations falling within the class set forth by it should in the future file membership lists so that such

organization could not, at a later date, under cover of secrecy, develop into one that might be inimical to the welfare of the State of Louisiana and its citizens.

Only one time has a statute of similar import been tested in the United States Supreme Court, *New York, ex rel. Bryant, v. Zimmerman*, 278 U. S. 63, 73 L. Ed. 184. The petitioner in that case was convicted under a Ku Klux Klan statute very similar to the one at issue, and one of the points he specifically urged upon appeal was that the membership filing provision of the New York Law deprived him of exercising his right of membership in the association. The Court placed this contention to rest in no uncertain terms.

"The relator's contention was that under the due process clause is that the statute deprives them of liberty and that it prevents him from exercising his right of membership in the association. But his liberty in this regard like most other personal rights must yield to the rightful exertion of the police power. There can be no doubt that under that power the state may prescribe and apply to associations having oath bound membership any reasonable regulations calculating to confine their purposes and activities within limits which are consistent with the rights of others and the public welfare. Requirement in S53 that each association shall file with the Secretary of State a sworn copy of its constitution, oath, membership, etc. with a list of members and officers, is such a regulation. It proceeds on the two-fold theory that the state with-

in whose territory under whose protection the association exists is entitled to be informed of its nature and purpose, of whom it is composed and by whom its activities are conducted, and that requiring this information to be supplied for the public files will operate as the effective or substantial deterrent from the violations of public and private right to which the association might be tempted if such disclosure were not required. The requirement is not arbitrary or oppressive but reasonable and likely to be of real effect. Of course, power to require the disclosure includes authority to prevent individual members of an association which has failed to comply from attending meetings or retaining membership with the knowledge of its default. We conclude that due process clauses are not violated." 278 U. S. at 72.

The reasoning used in the *Zimmerman* case has been followed by the United States Court of Appeals in *Communist Party of the U. S. v. Subversive Act Con. Bd.*, 223 F. (2d) 531.

"The Party argues that the registration provisions of the statute before us do not call for the production of books or records but require the preparation and submission of a registration statement. That statement must contain (Section 7(d)) the name and address of the organization, the names and last known addresses of the officers and members, an accounting of moneys received and expended, and in the cases of officers and members who are known by more than one name, such other names. The Party says that such a statement is protected by

the privilege even though books and records are not. But membership lists and accountings for money furnished by an organization are reproductions of or extracts from organization records. And if the records can be compelled oral testimony 'auxiliary to the production' can be compelled. Whether such records are kept formally or informally is immaterial. No additional explanatory testimony is required by this statute.

"Moreover Congress could require Communist-action organizations to keep membership lists and accounting records. The opinion in People of State of New York ex rel Bryant v. Zimmerman establishes that proposition. The provisions of this statute in effect make such a requirement. The Government requires many organizations to keep records. For example, it required all business houses to keep price records when prices were under Government control. To say that a Communist-action organization, as that term is defined in this statute, could not be required to keep records of its membership and its moneys is wholly untenable in our view. If these are matters of which organization records could be required, they fall squarely within the rule in the White case, supra. As to a registration statement we think the White case applies." At 547.

"Preliminarily we note that the requirement for registration in and of itself presents no difficulty. It is no more than we customarily require of many organizations; such as lobbyists and foreign agents, and even of doctors, lawyers, restaurants and bar-

bers, who are required to register and obtain licenses. The requirement for an accounting of moneys received and expended is no more than is required of any political party, and since petitioner claims to be a political party we see no invalidity in the application to it of such a requirement. The requirement that a political organization list its members is similar to the customary requirement in the states that persons participating in the activities of a political party, such as primaries, conventions, etc., register publicly as members." At 554.

Apparently, it was felt by the Legislature, and not without just cause, that secrecy leads to anarchy. This belief does not appear to be one solely of the Legislature of Louisiana but has been expressed by other parties, at less trying times and certainly with less justification.

"I agree that what I see as symbols of the future are not characteristic of the prevailing thought in many quarters today. Some there are who would have associations treated as private preserves, immune from scrutiny and supervision. They want their activities, finances, systems of elections and contracts hidden behind the curtain. To them I would repeat the maxim of the greatest historian of liberty, Lord Acton: 'Everything secret degenerates, nothing is safe that does not show how it can bear discussion and publicity.'" Charles E. Wyzanksy, Jr., *The Open Window and Open Door*, 35 *Cal. L. R.* 336, 350.

It should be noted before passing on, that the State of Louisiana is very liberal with regard to nonprofit corporations and other organizations of a similar nature which desire to operate within the state. There are no provisions whatsoever which prohibit the formation of such organizations because of the type of dogma they seek to espouse, membership they seek to invite into their organization or endeavors they desire to undertake. Their right to function is in no way discretionary with the state and their actions may not be prohibited because the state feels that those actions are not of the nature or type that the general public approves, or what is generally state policy, such as may be found in other states. This statute certainly does not smack of the type of conduct that is judicially approved in the state of New York.

Association for the Preservation of Freedom of Choice, Inc., 188 N. Y. S. (2d) 885 (1959):

> "The argument of the memorandum mistakes the issue. In no way was freedom of association or freedom of expression involved in the denial by this Court of the application for approval of the certificate of incorporation. All that was denied to this group was the privilege of incorporation as a membership corporation. Certainly, the sponsors of the proposed membership corporation, are completely free to associate for the purposes they spelled out in the proposed certificate. They are also free to speak out in support of racial and religious discrimination. But they may not compel the State to grant them, for these purposes, the benefits and privileges of incorporation as a membership corporation. Mr. Justice Levy in re Gen-

eral Von Stuben Bund Inc., 159 misc. 231, 287 N. Y. S. 527, 530—a decision which counsel for applicant acknowledges 'is properly based' stated that 'where, however, persons so banded together desire to secure the privilege of corporation, another situation is presented.' Mr. Justice Levy pointed out that in examining an application for a corporation as a membership corporation 'it is the duty of the justice to act more than as a ministerial officer in meeting the requirements of the statute' and he emphasized that though the corporation under the State law as a 'privilege' be denied, such a denial would in no way prevent a number of individuals from carrying out whatever lawful propaganda activities they may wish to engage in since no legal license is required for such purpose." At 887:

"This Court has searched diligently and has found no precedent to support the implied claim of applicants that the right to incorporate is anything other than a privilege. The very framework of membership corporation law, which requires the approval of a justice of the Supreme Court of the Judicial District in which the office of the corporation is to be located, makes it clear that the legislature intended to grant to the Court discretion as to whether a corporation should be granted. As was pointed out by Mr. Justice Walsh in the application of Stillwell Political Club, Inc., Sup., 109 N. Y. S. (2d) 331, at page 333, 'before approving a proposed membership corporation, it is the duty of the Court to be satisfied that the substance as well as the form does not violate the wholesome

public policy and does not permit irresponsible or unequipped citizens to operate under a corporate charter which has been approved by the Court and will be accepted by the Secretary of State.' At 887.

"Our system of government can only be maintained by the free and untrammeled collision of ideas, but when those ideas run counter to the mores or policies or laws, no group should be permitted to organize in corporate form with the sanction of the state to espouse such ideas. It could hardly be contended, for instance, that on the theory that otherwise they would be denied individual freedom of choice or freedom of expression, the incorporators here could compel the Court to approve the organization of a corporation which sought as its purpose to propagandize for the repeal of laws against bigamy. Yet, if the proponents contention here is correct, that despite the public policy of our State and nation to the contrary of what they seek to espouse, this Court has no choice and must grant them a charter, it would have no choice in a bigamy case either. Such proponents would have a perfect right as individuals to adjudicate for the abolition or repeal of the laws against bigamy, but they could not, as a matter of right, demand incorporation for that purpose. The applicants here are in no better position." At 889.

Consistently the NAACP has placed utmost reliance upon two cases. *NAACP v. Alabama*, 357 U. S. 449, 78 S. Ct. 1163, and *Bates v. City of Little Rock*, 361 U. S. 516, 80 S. Ct. 412. It has attempted to forge these two cases into a Procrustean couch in which to "fit" all stat-

es which it feels might in the slightest way impair its owth, function, or operation.

The *Alabama* case hinged upon the question as to ether or not the state had shown "justification" in taining the membership lists. The Court only reversed e contempt conviction upon finding that there was no cessity for the production of the lists.

"Whether there was 'justification' in this instance turns solely on the substantiality of Alabama's interest in obtaining the membership lists. During the course of a hearing before the Alabama Circuit Court on a motion of petitioner to set aside the production order, the State Attorney General presented at length, under examination by petitioner, the State's reason for requesting the membership lists. The exclusive purpose was to determine whether petitioner was conducting intrastate business in violation of the Alabama foreign corporation registration statute, and the membership lists were expected to help resolve this question. The issues in the litigation commenced by Alabama by its bill in equity were whether the character of petitioner and its activities in Alabama had been such as to make petitioner subject to the registration statute, and whether the extent of petitioner's activities without qualifying suggested its permanent ouster from the State. Without intimating the slightest view upon the merits of these issues, we are unable to perceive that the disclosure of the names of petitioner's rank-and-file members has a substantial bearing on either of them." At 464.

Again in the *Alabama* case the Court found undisputed evidence of economic reprisals and physical coercion.

> "We think that the production order, in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association. Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." At 462.

In the case at bar there was an attempted showing of reprisals introduced by affidavits submitted by appellees. If unopposed, they might have made a strong showing, but under the scrutiny of oral depositions and traversed by counter-affidavits, they dwindle to insignificant proportions.

Arthur Chapital, President of the New Orleans Branch, alleged that he received threatening letters and phone calls in 1956. Conceding, for the purpose of argument, that the letters and phone calls (letter not introduced) were made, these are no more than any person in the public eye receives, and furthermore, they were received according to Mr. Chapital's own statement, prior to the time the membership list for the Orleans Parish Chapter was filed.

Affiant further stated that the filing of the membership list caused the membership to dwindle. Other than his statement, the only evidence in the record is the two lists filed in the consecutive years, which show conclusively that the membership doubled in the year after the first list was filed (R. pp. 125-127).

Mrs. Doretha Combre, President of the NAACP in the State of Louisiana, also testified that she received threatening phone calls and letters (again, none of the letters introduced in evidence); she complained that the injunction issued by the Court thwarted the growth of her organization. Yet it is interesting to note by the copies of the lists introduced that at her home branch, the Lake Charles Branch, more than doubled its membership, after filing its list, despite alleged nameless, faceless people, who feared reprisals, both economic and physical (R. p. 106).

Another prime example of a person who talked intimidations and reprisals but was a living example of a person who had received treatment far above and beyond that to which he was entitled is R. L. Williams. He had been president of the Shreveport Chapter of the NAACP on and off over a period of years. He was well known as a leader in the NAACP movement in Shreveport and the obvious target of economic reprisals and intimidation. In his affidavit he stated that since the injunction issued by the State, his chapter was unable to recruit many new members; that prospective members refused to join because of fear (R. pp. 121, 122).

Depositions taken of the affiant under oath showed a picture far different than that painted in the affidavit.

He was employed at a salary of about $50.00 per week but in order to supplement that he had applied for, and was receiving from, the coffers of the State an old-age pension, although not entitled thereto. In addition, he did not burden himself with medical bills when members of his family became ill; he had them treated at the expense of the taxpayer at a charity hospital.

Although he complained bitterly of fear on behalf of other nameless people, he himself stated that his membership in the NAACP has never had an adverse effect on him and further that he did not know why the membership of the organization dropped (R. pp. 172-175).

The next affidavit was furnished by one Rev. Lee Andrew Durham, President of the Red River Branch of the NAACP. In his affidavit he mentioned that he knew personally of many persons who were intimidated and threatened with economic reprisal because of their membership or contemplated membership in the NAACP. He further stated that some people actually lost their jobs as the result of membership therein. He stated that many persons quit or refused to join the NAACP solely because they were afraid of this intimidation (R. p. 123).

It is interesting to note that in this affidavit, although he says he personally knew the people who suffered these intimidations and firings, he failed to give one name of any such person, therefore, making it totally impossible for the state to introduce any evidence to counteract this totally hearsay evidence of nameless and faceless accusers.

The depositions taken by the State of this affiant again painted a different picture of the situation. Affiant testified that the main reason for the drop in membership in the NAACP branch, of which he is president, was the injunction granted to the State rather than the intimidation that he set forth in his affidavit. Again, in his depositions, he was unable to give one concrete example of any person who was discriminated against economically or otherwise. As president of the branch he was a likely target for any action that might have been taken against any member of the NAACP, therefore it was interesting to see what facts were revealed in his depositions. He revealed that he had been a member of his NAACP branch ever since it was organized and that no person had ever given him any trouble because of his membership (R. pp. 161-165). The following is a quote from his testimony taken at the depositions:

"Q. Now, have you yourself personally ever been intimidated or harassed because of your membership in the NAACP?

A. Not personally." (R. p. 163.)

"Q. And it is your testimony that anyone has ever done anything to you because you are a member of the NAACP?

A. Not as I know of." (R. p. 163.)

"Q. And to your wife either?"

A. No." (R. p. 163.)

In addition to the witness stating that he had never suffered any reprisals whatsoever because of membership in the NAACP he further testified that both he and his wife received from the State of Louisiana the old-age pen-

sion and that neither he nor his wife had ever been threatened with being taken off those rolls because of membership in the NAACP.

The State, rather than relying upon the weakness of the affidavits given by the above parties, affirmatively proved by affidavits of competent, trustworthy parish officials that even though they were well aware of what went on in their respective communities they had no knowledge or had never heard of the alleged economic reprisals and harassment of these nameless, unknown persons within their parishes (R. pp. 142-148). What better or more direct proof could the State have made to show the utter and complete falseness of these affidavits?

Of all the complaints given, only two mentioned specific parties who felt that they had been discriminated against because of their membership in the NAACP. We shall deal with these two complaints. The first affidavit was one made by Frank Davis, a resident of Red River Parish, who testified that during the year of 1958 he operated a cafe in the town of Coushatta, Louisiana (R. pp. 114-115). He stated that because of his membership in the NAACP the rent collector and the mayor of the Town of Coushatta advised him that it would be necessary to close his business at 8:00 each night. He further stated that as a result of his membership in the NAACP his landlord raised his rent $10.00 per month.

In the depositions given by this witness, he altered the facts substantially (R. pp. 153-161.) First of all.

he denied in his depositions the fact that he stated that the Mayor of Coushatta came with the rent collector to see him.

"Q. Now, you say that your landlord or rent collector came to see you, is that correct?
A. Correct." (R. p. 156.)

"Q. Did someone else come with him?
A. No, sir, he didn't." (R. p. 156.)

"Q. Didn't you allege in your affidavit that the Mayor of Coushatta was also present at that time?
A. Didn't." (R. p. 156.)

"Q. You did not?
A. No sir."

Also the witness in his affidavit testified that because of his membership in the NAACP the rent was raised the sum of $10.00 a month. His answers to questions asked under oath at the depositions were completely different.

"Q. Alright, what was the rent you were paying there?
A. $25.00 a month." (R. p. 158.)

"Q. How much rent were you paying when you finally left there?
A. $25.00.

Q. You were never raised?
A. Never raised, no sir." (R. p. 158.)

The witness also stated in his affidavit that one of his main causes of trouble was his father's partici-

pation in the NAACP and his father's attempt to get new members for the NAACP. However, he shows definitely that his father has been drawing the old-age pension from the State of Louisiana and was never threatened in any way with being taken off the rolls. He further testified that his father, at all times, whenever he was ill, went to a State hospital and was treated freely at State expense.

Further, with regard to his statements that his business suffered great damage, he was unable, in any way, to substantiate this other than by his bold statement. The witness was unable to testify as to whether or not there had ever been income tax forms filed with regard to his income from the business, making it impossible for the State to check the authenticity of his statements. Further, the witness testified that he did not file a State sales tax report and a check thereon proved him correct, so it was impossible to verify or disprove his statement.

In order to show the true state of affairs, the State introduced the affidavit of one Lynn Bailey, the rent collector who was supposed to have raised his rent and have made him close early in the evening. This affidavit, without hesitation, completely denied all of the allegations made by Davis (R. p. 147). And, in addition thereto, the affidavits of many public officials in that parish definitely showed that there was no discrimination or intimidation against any person who was a member of the NAACP in that parish.

The other affidavit was one made by Joseph N. Blankenship, a resident of the Parish of Bienville, who

stated "that he knows of instances in which persons have been intimidated and in which economic reprisals have been taken against them because of their membership and their connection with the National Association for the Advancement of Colored People" (R. p. 103). While the affiant did not give any names of the many persons who he alleged had suffered economic reprisals in his affidavit, this was brought out more fully upon the depositions taken of him. Despite his allegations of multiple reprisals, it all boiled down to the fact that he only knew of one person who he believed had been discriminated against (R. p. 166).

"Q. Do you know of any person who ever lost their job because he was a member of the NAACP?
A. Only one person, John W. Overals. He lost his job but he would not join anymore for the reason he said he might wouldn't be able to continue his job." (R. p. 169.)

"Q. What was his job?
A. I think he was working at the bank, or something of the kind."

The witness further testified that though he believed Mr. Overals had been fired from the bank because of his affiliation with the NAACP, he went to work immediately thereafter for the State of Louisiana at one of its educational institutions.

In order to cast a true light on this statement, the State obtained from the director of the bank an affidavit as to the reasons why Mr. Overals was fired. This affidavit filed in evidence shows the following (R. p. 145):

1. That the bank did not know of Mr. Overals connection with the NAACP.
2. That Mr. Overals had been fired from the bank for inefficiency due to his lack of satisfaction with the job.

The State further introduced an affidavit of the District Attorney of the parish wherein the bank was located which conclusively showed that he had no knowledge of any discrimination against Mr. Overals or any other citizen of this district because of membership in the NAACP.

Surely a careful study of the evidence introduced into the record will show that the State proved affirmatively and beyond a reasonable doubt that membership in the NAACP had not resulted in economic reprisals or physical abuse in this State.

Additionally, in the *Alabama* case, the Court pointed out most emphatically that the NAACP willingly complied with all requests except that of the membership list.

> "It is important to bear in mind that petitioner asserts no right to absolute immunity from state investigation, and no right to disregard Alabama's laws. As shown by its substantial compliance with the production order, petitioner does not deny Alabama's right to obtain from it such information as the State desires concerning the purposes of the Association and its activities within the State. Petitioner has not objected to divulging the identity

of its members who are employed or hold official positions with it." At 463.

In the *Bates v. City of Little Rock* case, 361 U. S. 516, the Court again determined that there was no relationship between the tax and the production of the membership list, and therefore no justification for production.

"Decision in this case must finally turn, therefore, on whether the cities as instrumentalities of the State have demonstrated so cogent an interest in obtaining and making public the membership lists of these organizations as to justify the substantial abridgment of associational freedom which such disclosures will effect. Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling. N.A.A.C.P. v. State of Alabama, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. 1488. See also Jacobson v. Commonwealth of Massachusetts, 197 U. S. 11, 25 S. Ct. 358, 49 L. Ed. 643; Schneider v. State of New Jersey, 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155; Cox v. State of New Hampshire, 312 U. S. 569, 574, 61 S. Ct. 762, 765, 85 L. Ed. 1049; Murdock v. Commonwealth of Pennsylvania, 319 L. Ed. 1292; Prince v. Commonwealth of Massachusetts, 321 U. S. 158, 64 S. Ct. 438, 88 L. Ed. 645; Kovacs v. Cooper, 336 U. S. 77, 69 S. Ct. 448, 93 L. Ed. 513." At 524.

"When it is shown that state action threatens significantly to impinge upon constitutionality protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable

relationship to the achievement of the governmental purpose asserted as its justification.

"In this record we can find no relevant correlation between the power of the municipalities to impose occupation license taxes and the compulsory disclosure and publication of the membership lists of the local branches of the National Association for the Advancement of Colored People. The occupation license tax ordinances of the municipalities are squarely aimed at reaching all the commercial, professional, and business occupations within the communities. The taxes are not, and as a matter of state law cannot be, based on earnings or income, but upon the nature of the occupation or enterprise conducted." At 525.

"'In sum, there is a complete failure in this record to show (1) that the organizations were engaged in any occupation for which a license would be required, even if the occupation were conducted for a profit; (2) that the cities have ever asserted a claim against the organizations for payment of an occupation license tax; (3) that the organizations have ever asserted exemption from a tax imposed by the municipalities, either because of their alleged nonprofit character or for any other reason.

"We conclude that the municipalities have failed to demonstrate a controlling justification for the deterrence of free association which compulsory disclosure of the membership lists would cause. The petitioners cannot be punished for refusing to produce information which the municipalities could not

constitutionally require. The judgments cannot stand." At 527.

Despite the clear and unambiguous language of these two cases, the Court below apparently felt that the only question was whether or not the state law impinged on the freedom of association, rather than whether the state had justification for the passage of the statute, and if the production of a membership list was related to the exercise of the police power.

If any doubt existed heretofore, it was certainly set at rest by the recent case of *Shelton v. Tucker*, 81 S. Ct. 247, — U. S. — (1960). In this case the Court itself was divided five to four with regard to the constitutionality of an Arkansas statute. However, with regard to the interpretation of the *Alabama* and *Bates* cases, all nine members of the Court agreed unanimously with the interpretation given those two cases by the appellants herein.

> "This controversy is thus not of a pattern with such cases as N.A.A.C.P. v. Alabama, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. (2d) 1488, and Bates v. Little Rock, 361 U. S. 516, 80 S. Ct. 412, 4 L. Ed. (2d) 480. In those cases the Court held that there was no substantially relevant correlation between the governmental interest asserted and the state's effort to compel disclosure of the membership lists involved. Here, by contrast, there can be no question of the relevance of a state's inquiry into the fitness and competence of its teachers." At 250.

"As the Court recognizes, this is not a case where, as in N.A.A.C.P. v. Alabama, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. (2d) 1488, and Bates v. Little Rock, 361 U. S. 516, 80 S. Ct. 412, 4 L. Ed. (2d) 480, a State, asserting the power to compel disclosure of organizational affiliations, can show no rational relation between disclosure and a governmental interest justifying it. Those cases are relevant here only because of their recognition that an interest in privacy, in nondisclosure, may under appropriate circumstances claim constitutional protection. The question here is whether that interest is overborne by a countervailing public interest. To this concrete, limited question—whether the State's interest in knowing the nature of the organizational activities of teachers employed by it or by institutions which it supports, as a basis for appraising the fitness of those teachers for the positions which they hold, outweighs the interest recognized in N.A.A.C.P. and Bates—those earlier decisions themselves give no answer." At 253 (dissenting opinion).

"Furthermore, I take the Court to acknowledge that, agreeably to our previous decisions, the State may enquire into associations to the extent that the resulting information may be in aid of that legitimate purpose. These cases therefore do not present a situation such as we had in N.A.A.C.P. v. Alabama, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. (2d) 1488, and Bates v. Little Rock, 361 U. S. 516, 80 S. Ct. 412, 4 L. Ed. (2d) 480, where the required disclosure bears no substantial relevance

to a legitimate state interest." At 257 (dissenting opinion).

The State believes that it has shown beyond a reasonable doubt that there is a reasonable correlation between the production of the membership lists and the health, safety and welfare of its citizens, whom it has a duty and obligation to protect.

II.

IT IS A VALID EXERCISE OF THE POLICE POWER FOR THE STATE TO REQUIRE CORPORATIONS AND OR ASSOCIATIONS OPERATING WITHIN THE STATE TO FURNISH THE STATE WITH A LIST OF THEIR OFFICERS.

Section 4 of the judgment of the District Court prohibits the Attorney General of the State or any other State agent or agencies from proceeding with or participating in any judicial proceeding against the NAACP, its affiliates, members, contributors, or etc., under the provisions of Act 2 of 1924, L. R. S. 12:401-409. This provision of the judgment would, in effect, and does, keep the State from enforcing the requirement that the NAACP or its affiliates within the State provide a list of their officers. This judgment of the District Court goes far beyond, and as a matter of fact is in direct conflict with, the decisions they cite as sustaining it.

In the case of *N.A.A.C.P. v. Alabama*, 357 U. S. 449, the Court stated:

"As matters stand in the state court, petitioner (1) has admitted its presence and conduct of activities

in Alabama since 1918; (2) has offered to comply in all respects with the state qualification statute, although preserving its contention that the statute does not apply to it; and (3) has apparently complied satisfactorily with the production order, except for the membership lists, by furnishing the Attorney General with varied business records, its charter and statement of purposes, the names of all of its directors and officers, and with the total number of its Alabama members and the amount of their dues. These last items would not on this record appear subject to constitutional challenge and have been furnished, but whatever interest the State may have in obtaining names of ordinary members has not been shown to be sufficient to overcome petitioner's constitutional objections to the production order." At 464.

This Court specifically said it found no objection whatsoever to the furnishing of a list of officers of the association.

Again in the case of *Bates v. Little Rock*, 361 U. S. 516, the NAACP complied with Section 2, Part C, of the city ordinance which required the filing of a list of "the officers, agents, servants, employees, or representatives of the organization and the salaries paid them." (See footnote No. 4 of opinion.)

Consequently, the decision of the District Court is without merit or support in law and, as such, should be reversed.

III.

THAT THE STATE, IN ORDER TO PROTECT ITSELF AND ITS CITIZENS, MAY INQUIRE AS TO THE POSSIBILITY OF AN ORGANIZATION BEING CONTROLLED BY COMMUNIST AND OR SUBVERSIVE OFFICERS.

Counsel for plaintiffs admit that there is no attack made on Act 260 of 1958 (R. S. 14:385-388) on the theory that the Federal Government has pre-empted the entire field of subversive activities.

This Act in no way restricts any activities of the parent organization, the National Association for the Advancement of Colored People, as a New York Corporation. It does, however, prevent any organization's affiliate in the State of Louisiana from doing business therein without supplying an affidavit (as a condition precedent to the conducting of any activities) to the effect that the National or parent organization does not have any officers who are members of any Communist organization cited by the House of Congress Un-American Activities Committee or cited by the United States Attorney General as a Communist, Communist front, or subversive organization.

The public policy of the State of Louisiana is in line with the Federal policy and is set forth in Louisiana Revised Statutes 14:358, *et seq.*

There is a clear and present danger of this substantive evil which has been recognized by the Louisiana Legislature, by the Congress of the United States Government, and by the United States Supreme Court.

Your Honors have not only the right, but the duty, to take judicial notice of the machinations and infiltrations by Communists into perfectly legitimate organizations for the purpose of dominating and controlling the same and fostering and fomenting revolt and unrest among our citizens.

If these plaintiffs admit that any of the officers of the National Association for the Advancement of Colored People are members of any such Communistic or Communistic-front organizations, certainly, we believe, the State of Louisiana has a right in the protection of its internal security, as outlined in its declaration of public policy, to prevent any of its citizens from becoming involved directly or indirectly in fostering the ideology of such Communist or Communistic groups.

It is a matter of common knowledge that the State of Louisiana will be a prime target in the event of war by Communists and could be wide open to sabotage, terrorism and treachery.

As Your Honors well know, our most valuable freedoms, such as freedom of speech and freedom of association, must yield when there is a present, apparent and substantial evil existing which can only be curbed by reasonable restriction of such freedoms.

It is not an undue burden for any affiliate of a national organization to make an affidavit that the parent organization does not have as one of its officers persons who are members of organizations which seek to undermine the governments of our State and of the United States upon which our freedom depends.

Both State and Federal governments have restricted freedoms of our citizens for reasons of health, such as quarantine laws, against communicable diseases, such as leprosy; for reasons of morality, such as the Mann Act, preventing the transportation of women across state lines for immoral purposes; for reasons of commerce as in the Taft-Hartley Act; and state laws relative to an habitual association with prostitutes, and for reasons of general peace and order, such as holding of unlawful assemblies.

Certainly, there can be no logical reason why the security of the entire State and Nation can not be a motivating cause for the restriction of such freedoms.

CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed.

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CARROLL BUCK,
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WILLIAM P. SCHULER,
Assistant Attorney General.

CERTIFICATE.

I, William P. Schuler, a member of the bar of the Supreme Court of the United States, do hereby certify that copies of the foregoing brief for appellants were served upon the appellees through their counsel of record, herein below named, by placing the same in the United States mail, addressed to them at their offices with sufficient postage thereto annexed:

Mr. A. P. Tureaud, 1821 Orleans Avenue, New Orleans, Louisiana; Mr. Robert L. Carter, 20 West 40th Street, New York 18, New York, via air mail, and Mr. Thurgood Marshall, 10 Columbus Circle, New York, New York, via air mail.

WILLIAM P. SCHULER.

APPENDIX A.

La. Revised Statutes 12:401-409 (Act 2 of 1924)

401. Filing list of members and officers; failure to file

The principal officer or officers for this state, if there be such officer or officers, of each fraternal, patriotic, charitable, benevolent, literary, scientific, athletic, military, or social organization, or organization created for similar purposes, whether incorporated or unincorporated, operating in this state, with the exception of those hereinafter specifically excepted, shall file with the Secretary of State annually between December 16th and December 31st, inclusive, of each year, a full, complete and true list of the names and addresses of all of the members and officers of the organization living or residing in this state who are members at the time of the filing of the list, and of all those who have been members thereof at any time during the preceding period as defined in R.S. 12:407. These lists shall be certified under oath by the principal officer or officers. Any officer of such organization who fails to comply with the provisions of this Section shall be imprisoned not less than sixty days nor more than six months.

402. Filing list of members and officers of subdivision or subordinate body; failure to file

The principal officer of each subdivision or subordinate body located in this state of each fraternal, patriotic, charitable, benevolent, literary, scientific, athletic, military, or social organization, or organization created for similar purposes, whether incorporated or unincorporated, operating in this state, with the exception of those

specifically excepted, shall file with the Secretary of State annually, between December 16th and December 31st, inclusive, of each year thereafter, a full, complete and true list of the names and addresses of all of the members and the officers of such subdivision or subordinate body of such organizations who are members at the time of the filing of said list, and of those who have been members thereof at any time during the preceding period as defined in R.S. 12:407. These lists shall be certified under oath by the principal officer or officers. Any such officer of such subdivision or subordinate body of such organization who fails to comply with the provisions of this section shall be imprisoned for not less than sixty days nor more than six months.

403. Meetings prohibited unless membership list has been filed; penalty for violations

A. Every member of any fraternal, patriotic, charitable, benevolent, literary, scientific, athletic, military, or social organization, or organization created for similar purposes, whether incorporated or unincorporated, operating in this state, with the exception of those hereinafter specifically excepted, or of any subdivision or subordinate body thereof, is hereby prohibited from holding, assisting in holding, or attending any assembly, meeting, or gathering of such organization or of any subdivision or subordinate body of such organization unless a list of the officers and membership of the particular subdivision or subordinate body of such organization holding such assembly, meeting or gathering or within whose territorial jurisdiction said assembly, meeting, or gathering is held has been filed with the Secretary of State as required by R.S. 12:402, and unless, in cases where there

is a principal officer or officers for this state of such organization, there has been also filed with the Secretary of State a list as aforesaid of all of the members and officers of such organization living or residing in this state as required by R.S. 12:401.

B. If any member of such organization, or of any subdivision or subordinate body thereof, violates the provisions of this Section he shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars or more than five hundred dollars or imprisoned for not less than thirty days or more than six months, or both.

404. District attorney to prosecute violations

District attorneys throughout this state shall prosecute without delay any violations of this Chapter.

405. Attorney General to dissolve organization and prevent meetings

The Attorney General shall proceed by injunction or otherwise to dissolve any organization or subdivision or subordinate body violating the provisions of this Chapter and to prevent any meeting of the officers and members thereof until they have complied herewith.

406. Churches and National Guard unaffected

Nothing in this Chapter shall apply to any regularly organized churches or National Guard organizations.

407. Period for which lists are to be filed

The preceding period for each year shall end on the 15th day of December of the year in which the lists

shall be filed and shall begin on the 16th day of December of the preceding year.

408. Persons who are members

Any person shall be deemed a member, in contemplation of this Chapter, of the organization described in this Chapter, or of any subdivision or subordinate body thereof, who would be considered a member in the ordinary acceptation of the word or who has taken any oath or obligation in connection with any such organization, or who has received any degree or initiation from members or officers of such organization, or who, while living or residing in the territorial jurisdiction of any such organization or any subdivision or subordinate body thereof, has attended and participated in meetings or assemblies of such organization, or paid dues or fees to such organizations.

409. Lists to be permanent records of Secretary of State

The Secretary of State shall keep the lists filed with him under the terms of this Chapter as part of the permanent public records of his office.

La. Revised Statutes of 1950, Title 14:385-388
(Act 260 of 1958)

385. Organizations engaged in social, educational or political activities; Communist affiliations prohibited

Non-trading corporations, partnerships and associations of persons operating in the state of Louisiana and engaged in social, educational or political activities are prohibited from being affiliated with any foreign or out of state non-trading corporations, partnerships or asso-

ciations of persons, any of the officers or members of the board of directors of which are members of Communist, Communist-front or subversive organizations, as cited by the House of Congress un-American Activities Committee, or the United States attorney. Reports or information from the files of the Committee on un-American Activities of the U. S. House of Representatives shall constitute prima facie evidence of such membership in said organizations.

386. Affidavits

As a condition precedent to being authorized to operate or conduct any activities in the state of Louisiana, every non-trading corporation, partnership or association of persons engaged in social, educational or political activities, affiliated with any similar non-trading corporation, partnership or association of persons, chartered, created or operating under the laws of any other state, shall file with the secretary of state yearly, on or before December 31, an affidavit attesting to the fact that none of the officers of such out of state or foreign corporation, partnership or association of persons with which it is affiliated, is a member of any such organization cited by the House of Congress un-American Activities Committee, or the United States Attorney General, as Communist, Communist-front or subversive.

387. Failure to file affidavit; penalty

Failure to file the affidavit required by R.S. 14:386 shall constitute a misdemeanor, and the officers and members of such non-trading corporation, partnership or association of persons operating in this state and affiliated with such out of state or foreign organizations, failing to

file such affidavit, shall be deemed guilty of a misdemeanor and upon conviction by a court of competent jurisdiction shall be fined $100.00 and imprisoned 30 days in the parish jail.

388. False statements in affidavit as perjury

Any false statement under oath contained in the affidavit required by R.S. 14:123.

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388. False statements in affidavit as perjury

Any false statement under oath contained in the affidavit required by R.S. 14:123.

APPENDIX B.

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MAINTAINING THE CONSTITUTION IN LOUISIANA

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In this period of unrest and uncertainty, thinking Americans, instead of following the unknown and very dangerous paths of the various "isms," should steadfastly adhere to the advice of splendid patriotic men to whom this Nation owes an everlasting debt of gratitude for their foresight and for their wisdom. These patriots whom we can follow with the certainty of standing for everything best for our happiness and developments, are Washington, Jefferson, Lincoln and Roosevelt, each of whom will eternally live in the records of this country and has left the imprint of his powerful personality upon our people and looked to the future and to the prevention of those ills from which all other republics have suffered.

Washington said:

"* * * The very idea of the power and right of the people to establish Government presupposes the duty of every individual to obey the established government.

"All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract or awe the regular delibera-

tion and action of the constituted authorities, are obstructive of this fundamental principle, and of fatal tendency. * * * However combinations and associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines by which cunning, ambitious and unprincipled men will be able to subvert the power of the people, and to usurp for themselves the reins of government; destroying afterwards the very engines which lifted them to unjust dominion.

"Towards the preservation of your Government, and the permanency of your present happy state, it is requisite not only that you steadily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the innovations upon its principles, however specious the pretext."

This statement was made in his farewell address to the American people. Every word came from the heart, from a man with vision and whole-soul desire to see that our Nation lived up to that constitution adopted by the convention over which he had the honor to preside.

Jefferson, that great apostle of Democracy, emphasized with all the power at his command, the purposes and intent of the constitution in declaring America to be a land where everyone could express his religious and political views, and who emphasized the fact that the constitution throws its protecting arm alike around Catholic and Protestant, Jew and Gentile, Hindu and Quaker.

Our martyr President, Lincoln, whose glorious memory will remain in the hearts of his people for countless generations, repeatedly plead for fearless and fair enforcement of the law by the duly constituted authorities elected by the people themselves; and he and other presidents emphasized the fact that laws were made by the people to be enforced and obeyed, and that ours was a Nation to be ruled by law and not by men.

No man ever fought harder for the rights of mankind than did my friend, Roosevelt. For twenty-five years it was my privilege to be intimate with him, and never once, by word, deed, or act, did he say or do anything that was not marked by the highest patriotism and a sincere desire to be of service to all the people. He repeatedly stated that he regarded it as wicked for any man to array class against class, religion against religion, and that one of the wise things of the Nation was the proviso in the constitution of every state that not a dollar of public funds should be appropriated for parochial schools of any creed, for the public schools belonged to all the people; therefore, they represented one of the greatest American assets to our future womanhood and manhood. Time after time he emphasized the fact that expenditures for our public schools were not a waste of money but the best investment that could be made.

Today we see all the splendid advice given us by those eminent Americans being cast aside and an effort made by an organization calling itself the Ku Klux Klan and members of the "Invisible Empire," having the audacity to rise superior to our duly constituted legal authorities and take the law in its own hands; waging a fight against Catholic and Jew; disrupting Protestant congregations;

seeking to dictate who shall and shall not be teachers in our public schools; ostentatiously making contributions to churches to influence the support of ministers (in no one instance were these donations reported refused) and endeavoring to tear asunder community ties and lifelong friendships by injecting into social life every one of the issues against which we have been so solemnly warned.

The time has come for me to make a clear-cut statement in regard to conditions at Mer Rouge.

On the 28th of August last, my phone rang late at night and a pitiful female voice appealed to me to try to help to find the petitioner's husband. The lady stated that her name was Mrs. Richards; that she was from Mer Rouge, Louisiana; that her husband had been taken from a baseball game and barbecue at Bastrop on August 24th, away from the garage where he worked; torn away from her little three-year-old child, who was with him, and that an earnest effort had failed to produce any information in regard to him. She begged me to do all in my power to try to locate him or learn what had become of him.

The pleading wife said she was an orphan when she married Richards, that she had two little girl babies, that Richards was a kind, good husband, had never been in any kind of trouble, and as he was only a garage employee, had left her absolutely destitute.

Within the next day or two, a letter came to me from J. L. Daniel, asking me to help him to find his son, Watt Daniel, who had been taken by masked men off the public highway of Louisiana at the same time Richards

was kidnapped. This statement was coupled with the information that the father himself had been brutally beaten as had a young man named Andrews before they were turned loose. The father wrote he would give anything in the world to find out what had become of his son.

He stated his son, Watt Daniel, had served during the War in the 336th Tank Corps, had always been a dutiful son and never in trouble. Daniel's war record was excellent. Many letters from officers and men in his division testify to his gallant record as a fearless soldier and patriotic American.

The judge of the district was asked to call a special session of the grand jury, and to request the assistance and cooperation of the district attorney and sheriff in order to ascertain who was responsible for these outrages and, if possible, what had become of the missing men. Accordingly, the grand jury of Morehouse Parish was called in session, and rumor had it that nine out of the twelve of that body were active Klansmen. The report was a complete whitewash and no information of any character was disclosed to show who were responsible for the outrages or what had become of the missing men.

In the meantime, information began to come to my office in the shape of letters and messages. Some were signed by the persons who sent them, but written in strict confidence, because the correspondents stated their lives were in danger. Others were unsigned, but furnished information which was later verified.

In compliance with my pledge to do all that lay in my power to bring to justice those guilty of these

hidden crimes, and after the duly constituted authorities of Morehouse Parish had signally failed to render any assistance, Attorney General Coco and myself made a trip to Washington where the details were laid before the President and Attorney General, and an official request made for the help of the Department of Justice-- not to supersede any state authorities, but representing as it did the best investigating brain in this country, to lend a helping hand to bring before the bar of justice those, who, under cover of mask and hood, violated the laws and were gravely suspected of taking human life. While in Washington, my statement was made to a large number of members of the Press Club, representing newspaper men that, instead of having any inquiry made by the present grand jury, there would be a public hearing where the ablest and best newspapers of the country would be represented by skilled journalists and the truth bared in regard to existing conditions. The splendid service of the Bureau of Investigation was shown at this hearing and when the cases are brought to trial will show overwhelming proof not only as to the guilty parties, but the fact established that every man charged with and guilty of the outrages in Morehouse Parish was a member of the Ku Klux Klan.

Letters and telegrams offering help came to me from all sections of the country but the only outsider was a Western newspaper man, himself a member of the tank corps, who had been to Morehouse and investigated conditions, and who was responsible for securing the diver and diving apparatus. These were never employed for the very sufficient reason that Lake Lafourche in which the bodies of Daniel and Richards were found, was dynamited

by Klansmen. If the purpose of these dynamiters was to destroy the bodies and remove the evidence, it failed. The bodies came to the surface and were identified beyond the possibility of doubt by those who knew and loved them.

With the single exception of Mrs. Richards, who called at my office, none of the other parties have ever been seen by me, to my knowledge. My work in assisting to enforce the law squarely and fearlessly deserves no praise, because it was in strict accordance with my oath of office.

The American public is familiar with the ghastly details of that hearing. It is further familiar with the public report that even the new grand jury which has been drawn will probably be largely composed of Klansmen and that the question of indictment is problematical, but the people have the assurance of the Attorney General that indictment or no indictment, he will file information against a large number of these men whom he and the special counsel will vigorously prosecute.

Law and order must and shall prevail in Louisiana. It is inconceivable that any body of men working under cover of darkness, garbed in gown and cowl should be permitted to rise superior to our legally constituted authorities and to the law.

This prosecution is neither religious nor political. My whole life has been spent as a Presbyterian, for thirty-five years a Mason, and my sons both Masons and war veterans with foreign service.

The Knights of the Ku Klux Klan have as much right to organize as the Knights of Columbus, the Masons, the B'Nai Brith and the Pythians, but neither the Klan nor any other organization has the moral right or the legal right to work under cover of darkness and mask to commit outrages and crimes that take us back to the middle ages and the days of barbarism.

Let us think over the words of Washington, Jefferson, Lincoln and Roosevelt. America was originally peopled by the bravest and most adventurous spirits of the Old World. We are the one Republic which has lasted nearly one hundred and fifty years, because we have been true to ourselves, true to our traditions and true to our constitution. We cannot, at this late date, commit the crime of mixing religion and politics, tearing families and communities asunder and creating untold bitterness and discord where peace and good will should prevail. Every state and the National Government should declare against masked men and mob violence in such unmistakable terms and with such severe penalties that none would incur the risk.

Members of the great secret societies referred to above gladly publish the list of their members and many of the members of these organizations wear over their heart on the lapel of their coats, the pin and emblem of their order. The Klan, on the contrary, endeavors to be absolutely secret as to who its members are, to create an air of mystery and terror and none can read the accounts carried in every newspaper in the United States, of the conditions in Morehouse Parish, of the orders of the Grand Cyclops to his "Terrors," and the manner in which these

orders were executed and not feel and know the time has come for drastic action.

Every man implicated in these outrages was a member of the Klan. The sheriff of Morehouse Parish, who sat by and saw these men carried off in direct violation of his sworn oath of office, was an official of the Klan. The sheriff's deputies, the district attorney and many others were members of the Klan.

Officials of that order have pledged themselves repeatedly, in fine-sounding phrases, to assist in maintaining law and order. The records of Morehouse Parish show that not a single one of them ever, in the remotest degree, rendered any help, but, on the contrary, by means of their own information bureau, and by the full power of the Klan, they did all in their power to intimidate witnesses, choke off the investigation and prevent the light of publicity from reaching the American people.

Not one single time, since my inauguration as Governor of Louisiana, has the Ku Klux Klan or the Knights of the "Invisible Empire," directly or indirectly, given me the least help in enforcing the law. On the contrary, time after time, the Klansmen have terrorized communities; have threatened; in some instances have brutally beaten people and in others have committed crimes with such secrecy and fiendishness it has been impossible to ferret out, convict and send to the penitentiary or hang the criminals.

Similar conditions may, sooner or later exist in other states, where absolutely, without an opportunity for defense, men and even women are tried in secret by a bit-

terly partisan hostile mob, that, acting as prosecutor, judge, jury and executioner, carries out its own sentences.

Interfering as it does, with the orderly conduct of constitutional American government, the Ku Klux Klan is a menace to the political liberties of the people. It seeks to enforce the law, where there are constituted authorities for that purpose; it strikes at freedom of religious conscience, when the American constitution guarantees that freedom. It pretends that its mission is to punish lesser offenses, and to do this it commits greater crimes. Founded on the mere excuse of moral reform, it has become the deadly enemy of law and order, an instrument of terrible vengeance, a form of secret government that seeks to justify mob law in its most deadly and blighting shape. These acts of the mob at Mer Rouge were deliberate, cruel, unnecessary. They show to what uses Klanism may be put.

It is time, here and now, to forever unmask organizations of this kind and compel their members to stand out in the pitiless light of publicity and be judged, that their identity be known and their responsibility fixed. Action, and vigorous action, is necessary on the part of the American people. Oh, men and women of America, you who love your families, who love your homes, who love your country for its countless blessings to you and yours—enlist now for this work. The answer is up to you!